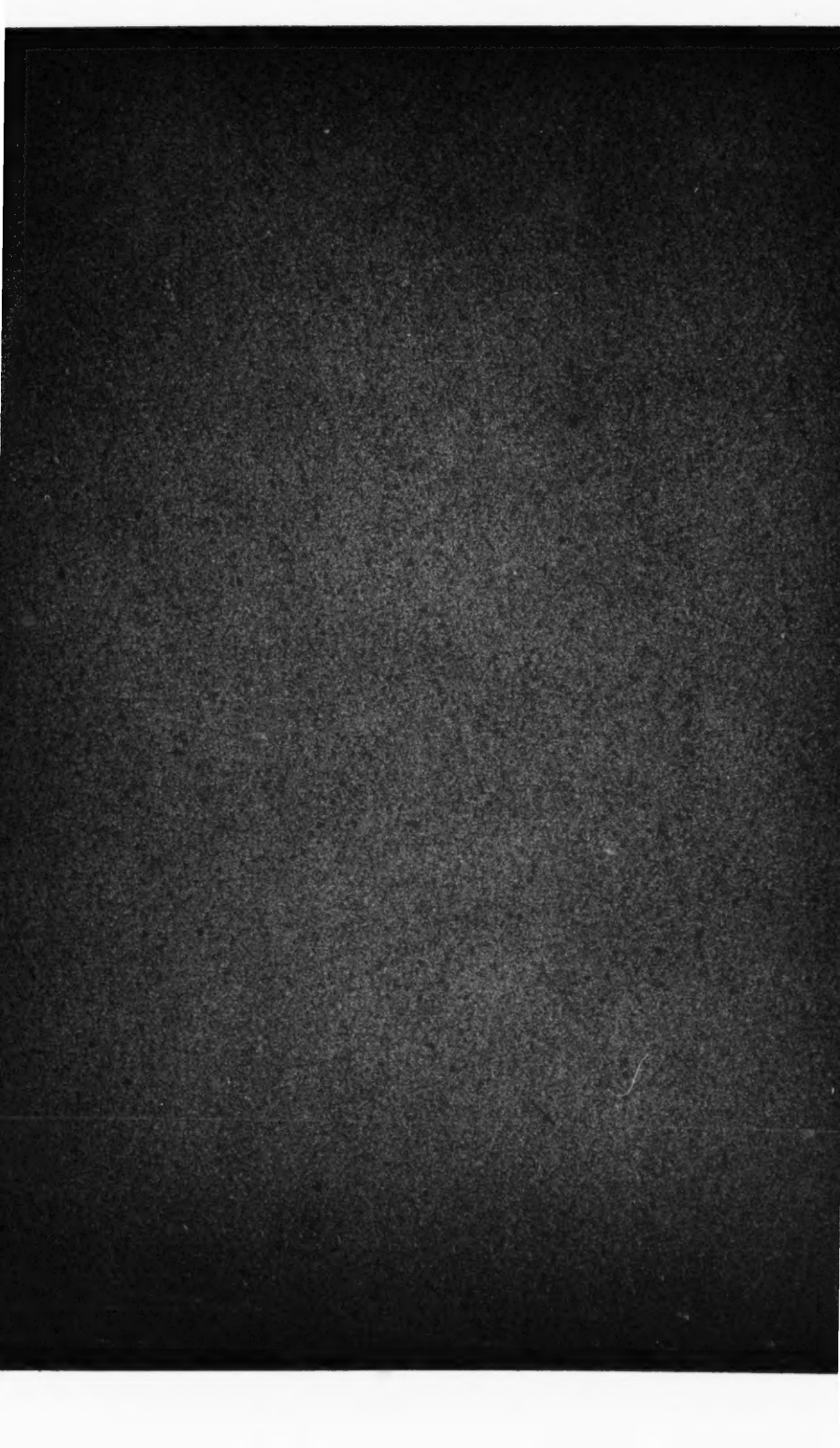

SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

No. 73-12 84

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

Michael N. Mervin, Petitioner

v.

Federal Trade Commission

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR

THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF OF THE PETITIONER

Michael N. Mervin,

Attorney pro se

7005 96th Avenue
Seabrook, Md. 2 0801

IN THE UNITED STATES SUPREME COURT

October Term, 1973

No. 73-1284

Michael N. Mervin, Petitioner

v.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF OF THE PETITIONER

Rule 24-5. reads in pertinent part: "Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending calling attention to new cases ... or other intervening matter not available at the time of his last filing."

In its belated memorandum in opposition to my petition filed by the respondent quite some

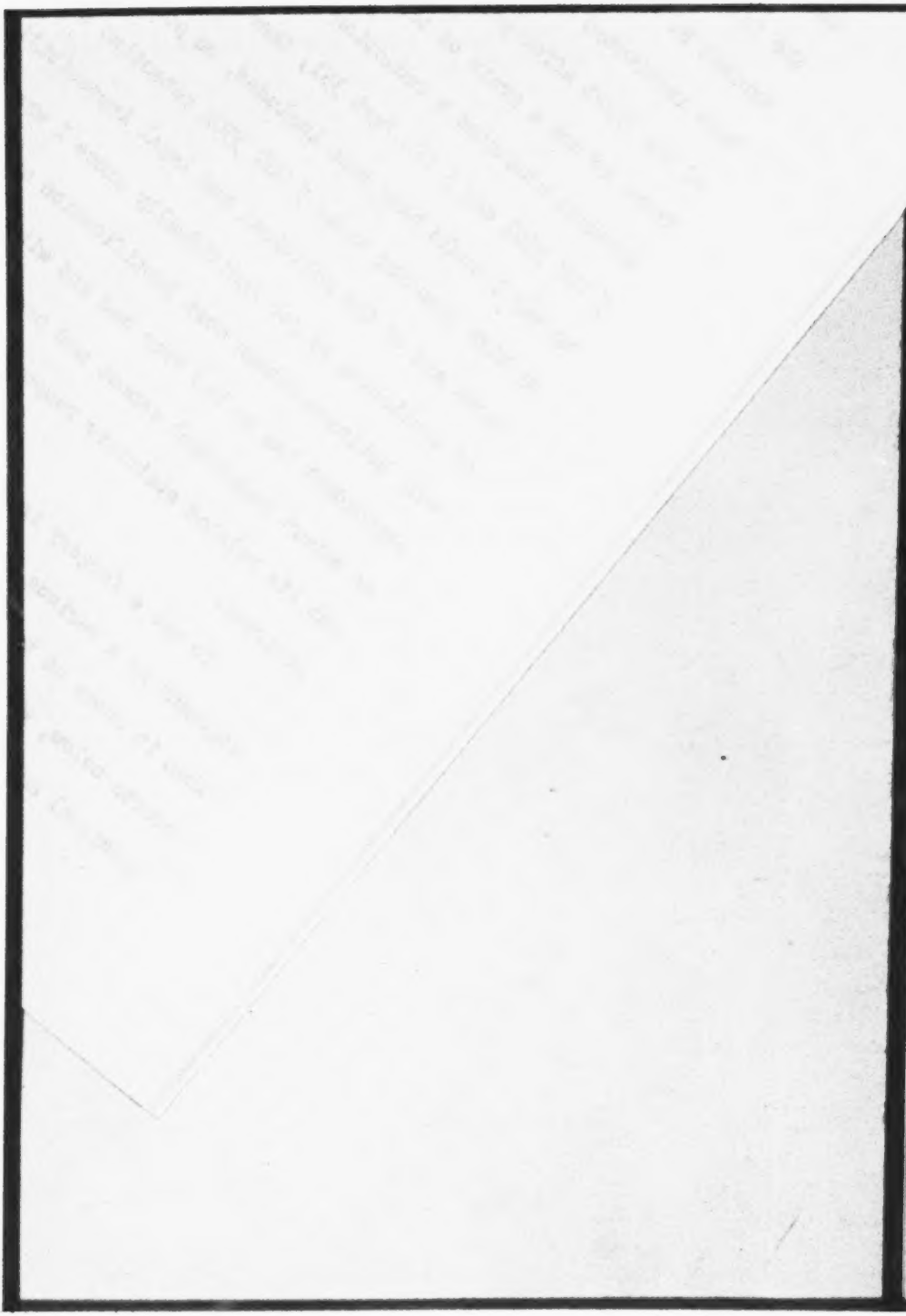
time after the expiration of all extensions for filing, respondent has invoked a new case, Arnett v. Kennedy, ___ U.S. ___, No. "73-1118" decided April 16, 1974.

Since the rule referred to above permits filing a supplemental brief under these circumstances and in view of the fact that the decision invoked in late filing may be of crucial importance in this case, I take the liberty to submit this supplemental brief for the purpose of discussing said new decision as well as some new matter.

Arnett v. Kennedy, ___ U.S. ___, 72-1118, April 16, 1974, is being used by respondent to clinch its new fraudulent misrepresentation that I was RIF-ed at least in substance, if not in form. The affidavit of John A. Delaney, on which the misrepresentation is based, is a fabrication that was never filed in the District Court. Had it been actually filed, it might have amounted to a perjury, depending on its wording, inasmuch as, to create an erroneous impression that I either

was or would have been RIF-ed, respondent quoted the following statement from its nonexistant Exhibit B: "If a formal reduction in force had been instituted Mr. Mervin would have been one of the first affected." (Footnote omitted)(Memo 2) There is not a grain of truth in this. Had respondent conducted a reduction in force under 5 USC 3501 and 5 CFR Part 351, there is absolutely no way I could have been included, on account of my high standing under 5 USC 3502 retention standards and of the political and legal impossibility of abolishing my job individually since I was the only Robinson-Patman cost justification expert respondent has or had ever had and without such an expert respondent cannot and could not carry out its related statutory responsibilities and programs.

To use a forgery in support of an essential argument is a serious misconduct, particularly when it comes on top of two previous frauds on the courts below, whereby respondent won its original dismissal and subsequent affirmance.



Respondent cites the Kennedy case in support of its proposition that "due process does not require a prior hearing in connection with a reduction-in-force." (Memo 4) It implies thereby that my discharge were a reduction in force, as an already established fact, a matter that goes without saying. Apart from the fact that I was not RIF-ed, but was discharged arbitrarily, the Kennedy case does not change the law pertinent here (Pet. 9-10) that a hearing before a permanent deprivation of property, such as occurred in my case, is an essential element of procedural due process. The plurality held (at p. 18 of the slip opinion): "... where the grant of a substantive right is inextricably interwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of appellee must take the bitter with the sweet." The substantive rights granted to me, however, by, inter alia, 5 USC 3502(a) were not accompanied by any procedural limitations. The statute does not set forth any procedures, and no administrative

remedy whatsoever exists to review non-RIF "RIFs," such as mine. Besides, in the Kennedy case, the plurality concluded (at p. 28) that Kennedy was adequately protected by "the post termination hearing procedures provided ...," so that the deprivation at issue there before the Court was only temporary, whereas here, since the Civil Service Commission rejected my appeal under 5 CFR 351.901, without deciding whether my discharge was "a reduction-in-force action" (XAI:APP decision signed by Herman D. Staiman, Chief, Appeals Examining Office, US Civil Service Commission, on March 8, 1973), the deprivation is absolute and permanent. Moreover, 5 CFR 351.901(a) does not provide for any hearing at any stage, before or after. In addition, the remedy at issue here is neither available to me by its terms nor was it designed for non-RIF "RIF-s."

My second subissue regarding the absence of prior hearing respondent has elevated to the level of my basic point in its last paragraph (b.) beginning "Petitioner contends alternatively ... ."

At the same time, respondent chose to ignore my first subissue, that the remedy in question was not available to me. It points out: "He concludes that he was not required to exhaust a constitutionally inadequate remedy." This is a summary of the Kennedy situation. Like in everything else, the underlying intent behind this contention is to mislead a busy Court into disregarding the basic issue, which is, simply stated, not whether I exhausted my administrative remedies, but whether failure to exhaust an administrative remedy(available or not, adequte or not) can propery trigger a mandatory jurisdictional dismissal (where the remedy is not a prerequisity to a judicial review by any statute, rule or regulation).

Respectfully submitted.

Michael N. Mervin,
Attorney pro se

May 1974.

This is to certify that I have served the foregoing brief by depositing three copies thereof in a US mail box, with first class postage prepaid, addressed to the Solicitor General, Dept. of Justice, Washington, D.C. 20530.

May ___ , 1974.

Michael N. Mervin